

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NISA BLAIR,

Plaintiff,

-v-

ACTING COMMISSSIONER CAROLYN W
COLVIN,

Defendant.

USDS SDNY
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16-cv-5983 (RJS)

ORDER ADOPTING
REPORT AND RECOMMENDATION

RICHARD J. SULLIVAN, District Judge:

On July 27, 2016, Plaintiff filed this action seeking judicial review of the decision of the Commissioner of Social Security denying her application for benefits pursuant to 42 U.S.C. §§ 401–434, 1381–1383c. (Doc. No. 1.) On August 24, 2016, the Court referred this case to the Honorable Kevin Nathaniel Fox, Magistrate Judge, for a Report and Recommendation (Doc. No. 6). On December 30, 2016, Plaintiff filed a motion for judgment on the pleadings (Doc. No. 12), and on February 28, 2017, Defendant filed a cross-motion for judgment on the pleadings and a motion in opposition to Plaintiff’s motion (Doc. No. 14). Plaintiff submitted a further letter reply in opposition to Defendant’s cross-motion on March 8, 2017. (Doc. No. 16.) On May 15, 2017, Magistrate Judge Fox issued a Report and Recommendation granting Plaintiff’s motion and denying Defendant’s cross-motion, finding that the Administrative Law Judge (“ALJ”) failed to properly develop the administrative record and that the ALJ’s determination of Plaintiff’s residual functional capacity was not supported by the requisite substantial evidence. (Doc. No. 17.) Magistrate Judge Fox advised the parties that failure to object within fourteen (14) days of the issuance of the order would result in waiver of objections and preclude appellate review. (*Id.* at 14.) To date, neither party has filed any objections and the time to do so has long since expired.

“When no objections to a Report and Recommendation are made, the Court may adopt the Report if there is no clear error on the face of the record.” *Correale-Englehart v. Astrue*, 687 F. Supp. 2d 396, 401 (S.D.N.Y. 2010). After conducting a thorough review of the record, the Court concludes that Magistrate Judge Fox’s opinion – at least with respect to the ALJ’s failure to develop the administrative record – is not facially erroneous. Accordingly, the Court adopts the Report and Recommendation with respect to remand, and, for the reasons set forth in the Report and Recommendation, grants Plaintiff’s motion for judgment on the pleadings, denies Defendant’s motion, reverses the judgment of the ALJ, and remands this matter to allow the ALJ to develop the record with functional assessments from Plaintiff’s treating physicians.

The Clerk of Court is respectfully directed to terminate the motions pending at docket numbers 12 and 14 and close this case.

SO ORDERED.

Dated: September 27, 2017
New York, New York



RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE